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No. 677

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

THE CITY OF SEATTLE, ET AL., *Appellants*
and
THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE W. R. COLE, JUDGE, *Appellant*
v.
ROBERT R. BEEZER
and
PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON

On Appeal from the Supreme Court of the State of Washington

SUPPLEMENTAL MEMORANDUM RELATING TO MOOTNESS

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February 10, 1964

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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In our motion to dismiss Seattle's appeal from the Washington Supreme Court's judgment granting mandamus, we referred (pp. 19-20) to the fact that Seattle's appeal had become moot because the trial judge meanwhile had held the trial which the Washington Supreme Court's writ of mandamus directed him to hold. At the time we filed our motion to dismiss, the trial was completed and the trial judge had announced his ruling on the merits, but he had not yet

made formal findings and conclusions nor had he formally entered his judgment.

Subsequently, on January 23, 1964, the trial judge did make extensive formal findings and conclusions, and on that same date he entered his formal judgment on the merits dismissing the Beezer suit with prejudice. His judgment is set forth in the Appendix hereto. This judgment on the merits has now been appealed to the Washington Supreme Court.

Accordingly, it is clear that, not only in substance but in form, the trial judge has completed all the things he was ordered to do by the writ of mandamus. The writ of mandamus ordered the trial judge to "proceed forthwith to the trial and entry of judgment on the merits" (J.S., p. A-15). Since the trial judge has done everything which the mandamus directed him to do, Seattle's appeal from the judgment granting mandamus has plainly become moot and should be dismissed.

Respectfully submitted,

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February 10, 1964

APPENDIX

Trial Court Judgment of January 23, 1964

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

No. 576444

ROBERT R. BEEZER, *Plaintiff*,

v.

THE CITY OF SEATTLE, ET AL., *Defendants*,

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON, *Intervenor*.

ORDER AND JUDGMENT OF DISMISSAL

THIS MATTER came on for trial pursuant to the remittitur of the Supreme Court of the State of Washington dated October 7, 1963. The trial was set to commence on November 12, 1963 before the undersigned judge, sitting by stipulation of the parties as a visiting judge for King County. The parties stipulated that the court should make a pretrial view trip to inspect any properties in Pend Oreille County requested by any of the parties. Plaintiff's counsel agreed to the view trip and agreed further that the view trip be held in his absence.

On October 22, 1963 the court, accompanied by Richard S. White of counsel for defendants, and by C. C. Dill and William G. Ennis of counsel for intervenor, and by engineers employed by defendants and by the intervenor, inspected and viewed (1) the Box Canyon dam, powerhouse and appurtenant facilities, owned and operated by intervenor as FPC Project No. 2042, (2) the gaging station operated by the United States Geological Survey on the left bank of the Pend Oreille River about 1,000 feet downstream from the Box Canyon dam, (3) the site at or near Z Canyon proposed by the intervenor to the Federal

Power Commission (FPC No. 2250) for construction of a dam, powerhouse and appurtenant facilities, (4) other properties along the Pend Oreille River in which the intervenor has some right or interest, including shorelands on both banks of the Pend Oreille River and uplands west of the Pend Oreille River near Z Canyon, and (5) the site known as Boundary licensed by the Federal Power Commission (FPC No. 2144) to the City of Seattle for construction of a dam, powerhouse and appurtenant facilities. The court held a pretrial conference in Seattle on October 25, 1963, attended by counsel for all parties.

Trial of this matter commenced on November 12, 1963. Plaintiff appeared *pro se* and by his attorney, Alfred J. Schweppe. Defendants appeared by their attorney, Alfred L. Newbould, corporation counsel, by Richard S. White, Robert L. McCarty and Richard W. Bartke, as special counsel. Intervenor appeared by its attorneys, C. C. Dill and William G. Ennis. Witnesses were sworn and testified. Exhibits were introduced in evidence. Copies of transcript of the proceedings were furnished daily to the court and to the parties. Written briefs were submitted by the parties covering various questions of law. All parties rested on November 27, 1963. By stipulation of the parties and request of the court, proposed findings of fact and conclusions of law and forms of judgment were submitted to the court on January 3, 1964. The court heard oral arguments of counsel on January 9, 1964, after having considered the proposed forms of findings, conclusions and judgment submitted by the several parties and having reread and considered the exhibits and the entire transcript of the testimony in the cause. The court having made and entered its findings of fact and conclusions of law and being fully advised in the premises,

It Is Hereby Ordered that the above-entitled action and the complaints of the plaintiff and intervenor be and they are hereby dismised with prejudice, and

IT IS FURTHER ORDERED that defendants have and recover their costs to be taxed against both the plaintiff and the intervenor.

DONE IN OPEN COURT this 23rd of January, 1964.

W. R. COLE
Judge

PRESENTED BY:
RICHARD S. WHITE
Of Attorneys for Defendants

APPROVED AS TO FORM AND NOTICE OF PRESENTATION WAIVED:
ALFRED J. SCHWEPPE
Of Attorneys for Plaintiff

APPROVED AS TO FORM AND NOTICE OF PRESENTATION WAIVED:
C. C. DILL
WM. ENNIS
Of Attorneys for Intervenor